

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of:)
)
Farzaneh, Inc.)
Busy Bee #3)
UST Facility ID No. 21753-103-007360)
Decatur, Morgan County, Alabama)
_____)

**PROPOSED
ADMINISTRATIVE ORDER**

No. _____

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.); the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rplc. Vol.); and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, the Alabama Department of Environmental Management (hereinafter the "Department" or "ADEM") makes the following FINDINGS:

1. Farzaneh, Inc. (hereinafter the "Owner") is the registered owner of a regulated underground storage tank (UST) facility located at Busy Bee #3, 2108 Sandlin Road SW, Decatur, Morgan County, Alabama, designated as ADEM Facility I.D. Number 21753-103-007360.

2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.).

3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rplc. Vol.), ADEM is the State Environmental Control Agency for the purposes of Federal Environmental Law, including 42 U.S.C. §§ 6991 to 6991(m), as amended.

4. ADEM is authorized to administer and enforce the provisions of the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rplc. Vol.).

5. Based upon an inspection of the UST facility and/or a review of facility records, the Department has documented the violations alleged herein.

6. ADEM Admin Code r. 335-6-15-.42 states that any owner of an underground storage tank shall pay a yearly Underground Storage Tank Regulation Fee of not less than \$15 and not more than \$30 per regulated tank per year. The amount of the fee shall be determined annually by the Director. Payment of the fee shall be due within 30 days of notification to the owner by the Department of the amount of such fee.

7. The Owner failed to pay UST Regulation Fees in violation of ADEM Admin Code r. 335-6-15-.42.

8. On December 1, 2009 an inspection by Department personnel discovered that the Owner had not paid Underground Storage Tank Regulation Fees for the years 2006 through 2010.

9. On December 23, 2009, the Department sent a Notice of Delinquency (NOD) to the Owner requesting that he submit spill catchment basin tests, corrosion protection test results, tank tightness test and contract for SIR services or other proof of leak detection, annual line leak detector tests and UST Regulatory Fees in the amount of \$150.00 within thirty days. The Department did not receive a complete response from the Owner that addressed the violations.

10. On February 25, 2010 the Department issued a Notice of Violation (NOV) to the Owner for his failure to submit a contract for SIR services and UST Regulatory Fees in the amount of \$150.00 as requested in the December 23, 2009 NOD. The NOV gave the Owner thirty days to submit the requested information. The Department did not receive a complete response from the Owner indicating that the violations had been corrected.

11. On April 13, 2010, the Department issued a Notice of Proposed Delivery Prohibition Letter to the Owner for his failure to submit a proof of leak detection for tanks and payment of \$150.00 in outstanding UST Regulatory Fees. The Owner was to respond to the Department by April 30, 2010.

12. Since compliance was not demonstrated to the Department by April 30, 2010, the facility was placed on the delivery prohibition list on May 5, 2010.

13. On May 18, 2010, based on the Department receiving a SIR contract and payment of UST Regulatory Fees, delivery prohibition was conditionally lifted.

14. On August 22, 2011, the Department sent a Notice of Delinquency (NOD) to the Owner requesting that he submit spill catchment basin tests, annual line leak detector tests and UST Regulatory Fees in the amount of \$30.00 within thirty days. The Department did not receive a response from the Owner.

15. On September 22, 2011 the Department issued a Notice of Violation (NOV) to the Owner for his failure to submit spill catchment basin tests, leak detector tests and UST Regulatory Fees in the amount of \$30.00 as requested in the August 22, 2011 NOD. The NOV gave the Owner thirty days to submit the requested information. The Department did not receive a complete response from the Owner.

16. On October 31, 2011, the Department issued a Notice of Proposed Delivery Prohibition Letter to the Owner for his failure to submit spill catchment basin tests, annual line leak detector tests and UST Regulatory Fees in the amount of \$30.00. The Owner was to respond to the Department by November 28, 2011.

17. Since compliance was not demonstrated to the Department by November 28, 2011, the facility was again placed on the delivery prohibition list on November 30, 2011.

18. On December 9, 2011, based on the Department receiving spill tests, leak detector tests and \$60.00 in UST Regulatory Fees, delivery prohibition was lifted.

19. The Owner has failed to pay UST Regulation Fees in a timely manner and in accordance with ADEM Admin Code r. 335-6-15-.42.

20. Pursuant to § 22-22A-5(18)(c), Ala. Code (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall be a separate violation.

In arriving at the civil penalty assessed in this matter, the Department has considered the following:

A. Seriousness of the Violation:

The Owner did not ensure that UST Regulation Fee and leak detection requirements were fully implemented or maintained, thereby undermining preventive measures designed to facilitate a quick response in the event of a release. The violations impede the Department's regulatory authority over USTs for threats to public health, safety and the environment.

B. Standard of Care:

The Owner/Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. Economic Benefit Which Delayed Compliance May Have Conferred:

The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Owner/Operator.

D. Efforts to Minimize or Mitigate the Effects of the Violation Upon the Environment:

There are no known environmental effects as a result of the alleged violations.

E. History of Previous Violations:

The Owner/Operator does have a history of previous violations.

F. Ability to Pay:

The Owner/Operator has not alleged an inability to pay the civil penalty.

G. Other Factors: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$2,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UST facilities, as follows (see attachment A):

Violation Type

Penalty Range for Violation Type

Owner failed to pay UST Regulation fees in accordance with ADEM Admin Code r. 335-6-15-.42;

\$0 - \$25,000

ORDER

Based on the foregoing FINDINGS and pursuant to §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(12) and 22-22A-5(18), Ala. Code (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, within forty-five days of the effective date of this Administrative Order, the Owner shall pay to the Department a civil penalty in the amount of \$2,000.00 for the violations cited herein. Failure to pay the civil penalty within forty-five days of the effective date of this Administrative Order shall constitute cause for the Department to file a civil action in the Circuit Court of Montgomery County, Alabama. Payment shall be made by Cashier's Check or Money Order, payable to the Alabama Department of Environmental Management, and addressed as follows:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That the Owner otherwise shall comply with all applicable requirements for each UST and shall continuously remain in compliance therewith each and every day thereafter until such time the UST is permanently removed from service pursuant to ADEM Admin. Code r. 335-6-15-.34.

C. That, should any provisions of this Administrative Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law, and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

D. That, except as otherwise set forth herein, this Administrative Order is not and shall not be interpreted to be a permit or modification of a permit under Federal, State or local law, and shall not be construed to waive or relieve the Owner of the obligation to comply in the future with all applicable law.

E. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Owner of the violations cited herein.

F. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Owner for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this the _____ day of _____, 2012.

Lance R. LeFluer
Director

ATTACHMENT A

Penalty Synopsis

Farzaneh, Inc.
833 Tannahill Drive
Huntsville, AL 35802
Busy Bee #3
2108 Sandlin Road, Decatur
21753-103-007360

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin Code r. 335-6-15-.42 states that any owner of an underground storage tank shall pay a yearly Underground Storage Tank Regulation Fee of not less than \$15 and not more than \$30 per regulated tank per year. The amount of the fee shall be determined annually by the Director. Payment of the fee shall be due within 30 days of notification to the owner by the Department of the amount of such fee.	1	\$500	\$500	\$1,000
Totals:	1	\$500	\$500	\$1,000

Economic Benefit*: \$0
Mitigating Factors*: \$0
Ability to Pay*: \$0
Other Factors*: \$0

Total Civil Penalty: \$2,000

Footnotes

* See the "Findings" of the Order for a detailed description of each violation and the penalty factors